

# PUBLIC INTEREST DISCLOSURE PROCEDURE

SEPTEMBER 2019



## Purpose

Building Queensland is committed to maintaining integrity and promoting the public interest through effective reporting, assessment and management of public interest disclosures (PID), in accordance with the [Public Interest Disclosure Act 2010 \(Qld\)](#) (the Act).

The procedure intends to:

- encourage reporting of wrongdoing
- support and provide feedback to disclosers
- manage the risk or reprisal associated with PIDs
- protect the rights of subject officers.

## Scope

This procedure applies to:

- all Building Queensland employees and non-employees including contractors, consultants and any other person or entity who provides Building Queensland with services on a paid or voluntary basis
- any member of the general public making a disclosure, as defined under the Act.

## Definitions

See **Appendix A** for definitions of key terms referred to in this procedure.

## Procedure

### What is a public interest disclosure?

A PID is a disclosure in the public interest, of information about wrongdoing in the public sector. For an allegation to be considered a PID, it must meet three criteria:

1. Public interest information about substantial and specific wrongdoing or danger:

Any person, including a public sector officer, may disclose information about:

- a substantial and specific danger to the health or safety of a person
- a substantial and specific danger to the environment
- reprisal action following a PID.

A public sector officer may also disclose information about:

- corrupt conduct by another person
- maladministration that adversely affects someone's interests in a substantial and specific way
- a substantial misuse of public resources

2. PID must be an appropriate disclosure:

An appropriate disclosure meets the subjective and objective tests set out in the Act. This means:

- the discloser honestly and reasonable believes the information provided tends to show the conduct or danger
- the information tends to show the conduct or danger regardless of the discloser's belief.

3. PID must be made to a proper authority:

Proper authorities are persons and organisations authorised under the Act to receive PIDs.

Examples of proper authorities are:

- the public sector organisation that is the subject of the PID
- the administering department of Building Queensland
- Crime and Corruption Commission
- Queensland Police Service
- a Member of the Legislative Assembly (MP).

Building Queensland is the appropriate authority to report the following types of disclosures:

- information relating to the conduct of Building Queensland or any of its employees and non-employees including contractors, consultants, volunteers and any other person or entity who provides Building Queensland with services on a paid or voluntary basis
- anything Building Queensland has the power to investigate or remedy
- the conduct of another person that could, if proved, be a reprisal that relates to a previous disclosure made by the person to a proper authority.

## Making a public interest disclosure

A PID may be made to Building Queensland verbally or in writing and may also be provided anonymously or through an authorised third party.

**Post:**

Group Director Governance and Business Services

Building Queensland

Level 30, 12 Creek Street

Brisbane QLD 4000

**Email:** [enquiries@bq.qld.gov.au](mailto:enquiries@bq.qld.gov.au)

**Online:** Visit <https://www.complaints.services.qld.gov.au/> for details of how to submit a PID online to the Queensland Government.

Officers also have the option to make a PID to other authorities such as another public sector entity, the Crime and Corruption Commission, the Queensland Police Service or a Member of Parliament.

Under the Act a PID may be made to a journalist, if a person has already made a PID to a proper authority and that authority decided not to investigate, did not take action, or did not notify the discloser within six months whether the matter would be investigated or not.

## Responsibilities and accountabilities

POSITION	RESPONSIBILITIES
Chief Executive Officer	<p>Has overall responsibility for ensuring that:</p> <ul style="list-style-type: none"> <li>▪ all employees are aware that they are required to conduct their duties to high professional and ethical standards and always act in the public interest (Building Queensland Code of Conduct)</li> <li>▪ reasonable procedures are in place to deal with PIDs and all legislative obligations in relation to reporting and investigation are met</li> <li>▪ PIDs are promptly and properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a PID</li> <li>▪ employees making a PID receive support and protection from reprisal</li> <li>▪ the Building Queensland Board are advised, where appropriate, of the nature of the PID and the course of action.</li> </ul>
Group Director Governance and Business Services	<p>Acts as Building Queensland's PID contact officer and is responsible for:</p> <ul style="list-style-type: none"> <li>▪ receiving, assessing and managing all PIDs in a confidential manner in consultation with the Chief Executive Officer</li> <li>▪ referring all suspected PIDs to the appropriate authorities in consultation with the Chief Executive Officer. This includes other entities if the matter relates to the conduct of another public sector entity or if the entity has the necessary jurisdiction (e.g. Queensland Police Service, Crime and Corruption Commission)</li> <li>▪ acting on the PID, which may involve making recommendations to the Chief Executive Officer for the appointment of an investigator</li> <li>▪ informing the discloser of reasonable information</li> <li>▪ maintaining Building Queensland's PID reporting system, including collection, reporting and reviewing of PID data</li> <li>▪ reviewing and accepting statistical, de-identified information collated by the administering department on behalf of Building Queensland to the Queensland Ombudsman about PIDs</li> <li>▪ evaluating and monitoring the effectiveness of PID procedures and related policies, and identifying how issues raised in PIDs can be used to inform improvements to service delivery, business processes and internal controls</li> <li>▪ ensuring recommendations are implemented in consultation with the Chief Executive Officer and, where appropriate, the Board quickly and efficiently to reduce the risk of reoccurrence.</li> </ul>
Executive Directors	<ul style="list-style-type: none"> <li>▪ Ensure that employees in their business area are aware of their reporting obligations</li> <li>▪ Monitor and assess the workplace for signs of reprisal against a discloser or subject officer</li> <li>▪ Notify the Chief Executive Officer or the Group Director Governance and Business Services in situations where any detrimental action has been taken</li> </ul>

POSITION	RESPONSIBILITIES
	against the discloser and discuss concerns and options for addressing the situation before it escalates.
All employees	<ul style="list-style-type: none"> <li>▪ Have an ethical responsibility to report suspected wrongdoing including for example corrupt conduct, maladministration, wasting of public funds, substantial and specific danger to public health and safety, the environment or a person with a disability, and reprisal action.</li> </ul>

## Assessing a public interest disclosure

All disclosures made to or referred to Building Queensland will be assessed by the Group Director Governance and Business Services to determine:

- whether the disclosure constitutes a PID on the information available at the time
- the person making the disclosure is able to receive the protection of the Act
- if there is a basis for the person making the disclosure believing, on reasonable grounds, the information shows the conduct, or if the person has information that tends to show the conduct
- the disclosure has been made to an individual or entity who may receive a PID and been made in accordance with the agency's procedure or as permitted by the Act
- to notify and consult with the Chief Executive Officer.
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If there is doubt whether the disclosure is a PID, the Group Director Governance and Business Services should assume that the disclosure is protected by the Act and manage the disclosure as if it were a PID. It is not necessary for the discloser to identify a matter as a PID as it is Building Queensland's responsibility to identify a PID and address it accordingly.

Each separate allegation will be reported as a separate PID, unless the matters are clearly linked, and it would be reasonable to view them as a single disclosure.

## Referral to another entity

Building Queensland may refer PIDs to its administering department. An exception to this requirement is if there is an unacceptable risk that a reprisal would happen because of the referral. In such cases, the Group Director Governance and Business Services will consult with the discloser, where possible, to consider the level of risk and identify alternate solutions.

## A decision not to investigate a disclosure

Where a decision not to investigate a disclosure assessed by the Group Director Governance and Business Services in consultation with the Chief Executive Officer and, where appropriate, in consultation with the Board and its administering department, Building Queensland will provide written reasons to a discloser of its decision or otherwise deal with a PID where:

- the matter has already been investigated or dealt with through another appropriate process
- Building Queensland reasonably considers the disclosure should be dealt with by another appropriate process
- the disclosure is not considered substantial and specific or the matter is considered trivial
- the age of the disclosed information makes it impractical to investigate

- Building Queensland reasonably considers the disclosure does not warrant an investigation and that treating the matter as a PID would not be an appropriate use of Building Queensland resources
- another entity that has jurisdiction to investigate the disclosure has notified Building Queensland that investigation of the disclosure is not warranted.

A discloser may apply to the Chief Executive Officer to review a decision not to consider information as a PID or not to investigate or deal with a PID within 14 days of receiving the assessment advice.

Alternatively, the discloser may contact the administering department of Building Queensland in relation to the PID. If no action is taken by Building Queensland, PID confidentiality requirements and protections continue to apply.

Under the Act, a discloser may make a PID to a journalist in certain circumstances. However, a journalist is not considered a 'proper authority'. A disclosure of information to a journalist can only occur after certain pre-conditions of the PID have been met, including:

- the disclosure was initially made to a proper authority and the information was determined to be a PID; and
- the proper authority decided not to investigate or deal with the PID; or
- investigated the PID but did not recommend the taking of any action; or
- did not notify the person, within six months after the date the PID was made, whether or not the PID was to be investigated or dealt with.

An employee may place themselves at risk of breaching other legal requirements when disclosing information to an unauthorised person. Disclosers are strongly encouraged to seek advice, including legal advice, before reporting information to the media.

A journalist is not bound by the preservation of confidentiality under section 65 of the Act.

## Risk assessment

As soon as possible after receiving a PID, a risk assessment is conducted by the Group Director Governance and Business Services in consultation with the Chief Executive Officer and, where appropriate the Board, to determine the level of risk of a reprisal to the discloser and to anyone associated with the disclosure.

Where a risk has been identified, appropriate protections will be put in place proportionate to the level of risk and potential consequences of a reprisal. This may include:

- developing specific strategies to reduce the level of risk to the discloser in the workplace
- consideration of the suspension or secondment of the person about who the disclosure is made (the subject officer).

If deemed necessary, the Group Director Governance and Business Services with agreement from the Chief Executive Officer and, where appropriate, the Board, and in consultation with the discloser, the administering department of Building Queensland and any other relevant stakeholder, will develop a protection plan for the discloser and provide ongoing support, including:

- acknowledging that making the PID was the right thing to do and is valued
- making a clear statement that Building Queensland will provide appropriate support to the discloser through this process
- ensuring that the discloser has appropriate support and protection from reprisal
- regularly checking the discloser's well-being where warranted

- providing information to the discloser about Building Queensland's employee assistance mechanisms
- liaising with the officers responsible for occupational health and safety if the discloser's health becomes a concern.

Where a reprisal is alleged, or suspected Building Queensland will:

- attend to the discloser's safety and/or that of any other affected parties as a matter of priority
- take all practical steps to minimise the possibility of reprisal by reviewing the risk assessment and protective measures provided to the discloser
- manage any allegation of reprisal as a PID in its own right.

The Group Director Governance and Business Services will advise the discloser when all organised support arrangements have been completed, although the obligation to provide protection from reprisal and maintain confidentiality about PID matters continues after the investigation is closed. The Group Director Governance and Business Services may continue to monitor the discloser's welfare for an additional period after the PID has been finalised to identify and resolve any unreported support needs.

### Disclosures made about an individual

Building Queensland will ensure that all people involved in PIDs (as discloser or subject officer) are offered an appropriate level of support and case management. Action will be taken to ensure where possible that identities and details of the disclosure remain confidential.

Subject officers are not automatically assumed to have engaged in the conduct alleged about them. The rules of natural justice apply to any subject officer under investigation in respect of an allegation. In such instances, the subject officer has the right to:

- know the substance of the allegations if a decision is going to be made about their conduct
- have a reasonable opportunity to put their case forward (in writing, at a hearing or otherwise)
- have a decision-maker act fairly and without bias.

Providing natural justice does not mean that the subject officer should be advised of the allegation as soon as it is received. The assessment, fact finding and necessary referral processes may all be conducted prior to a subject officer being advised of a PID. The subject officer need not be told about an allegation if it is:

- misleading
- has no substance
- not intended to act on the allegation.

Anyone who has an allegation made against them should be appropriately supported and reassured that the PID will be assessed impartially, objectively and reasonably, and that it is only an allegation until evidence is collected to show otherwise. They should be provided with information of their rights, and the progress and outcome of any investigation undertaken.

Employees who are the subject of an allegation may seek assistance from their legal representative or union or may use the services of Building Queensland's employee assistance program for advice and counselling.

Protection exists for anyone who has an intentionally false PID made against them. It is an offence under section 66 of the Act, punishable by up to two years imprisonment, to intentionally make a false

or misleading statement intending it to be acted upon as a PID. Making a false and misleading disclosure may also result in disciplinary action being commenced against the discloser.

It is the responsibility of Group Director Governance and Business Services in consultation with the Chief Executive Officer and, where appropriate, the Board to provide feedback to the discloser about the progress and the outcome of PIDs. Building Queensland also undertakes to keep a discloser who is not a public officer informed of the progress of their PID.

Any apparent conflict between disclosure and confidentiality will be risk-managed by Building Queensland through a clear focus on the prevention of fraud, wrongdoing and unethical behaviour as outlined in this procedure.

## 10 Reporting responsibilities

The Group Director Governance and Business Services is responsible for recording and reporting information regarding PIDs received by the Building Queensland. A record of each PID will include:

- the name of the person making the PID (if known)
- the subject of the PID
- any action taken on the PID
- any other information needed to comply with the reporting requirements of the Queensland Ombudsman, including:
  - a. the date the disclosure was received, and who it was received from
  - b. the status of the discloser (i.e. entity staff, staff from another entity, member of the public, anonymous)
  - c. the gender and status of the subject officer (staff member, non-staff member)
  - d. the relationship between the discloser and the subject officer
  - e. the geographical location of the subject officer
  - f. a summary of the allegation/information received
  - g. the involvement of an external agency/party
  - h. the action taken to minimize the risk of reprisal
  - i. the date the inquiry/investigation commenced and was completed
  - j. the outcome of the assessment, inquiry/investigation
  - k. the date the PID was resolved or closed
  - l. when the outcome was advised to the discloser
  - m. if no action was taken, the reason for the decision
  - n. other legal processes associated with the disclosure.

All documentation relating to a PID will be stored in a confidential file and secured in a locked area. No details will be placed on personal files. If an employee is transferred to another agency the PID file remains the property of Building Queensland.

## Appendix A – Definitions

The key terms referred to in this procedure are as follows:

Administrative action	<p>Defined in Schedule 4 of the Act and means any action about a matter of administration, including, for example:</p> <ul style="list-style-type: none"> <li>▪ a decision and an act; and</li> <li>▪ a failure to provide a written statement of reasons for a decision; and</li> <li>▪ the formulation of a proposal or intention; and</li> <li>▪ the making of a recommendation, including a recommendation made to a Minister; and</li> <li>▪ an action taken because of a recommendation made to a Minister; and</li> </ul> <p>It does not include an operational action of a police officer or of an officer of the CCC.</p>
Anonymous	Where the person disclosing information does not identify themselves at any stage, to anyone.
Corrupt Conduct	Section 15 of the <i>Crime and Corruption Act 2001</i> defines corrupt conduct for the purposes of the Act and this policy.
Danger	A threat or event that would cause harm or damage to both persons and/or property.
Disability	As defined in the <i>Disability Services Act 2006</i>
Disclosure	An individual (public service officer or member of the general public) who provided public interest information to Building Queensland that may constitute a PID.
Environment	As defined in the <i>Environmental Protection Act 1994</i>
Journalist	Pursuant to Section 20(4) of the Act - a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.
Maladministration	<p>Schedule 4 of the Act defines maladministration as administrative action that:</p> <ul style="list-style-type: none"> <li>o. was taken contrary to law; or</li> <li>p. was unreasonable, unjust, oppressive; or improperly discriminatory; or</li> <li>q. was in accordance with a rule or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or</li> <li>r. was taken – <ul style="list-style-type: none"> <li>i. for an improper purpose; or</li> <li>ii. on irrelevant grounds; or</li> <li>iii. having regard to irrelevant considerations; or</li> </ul> </li> <li>s. was an action for which reasons should have been given but were not given; or</li> <li>t. was based wholly or partly on a mistake of law or fact; or</li> <li>u. was wrong.</li> </ul>
Natural Justice	Natural justice involves decision-makers informing people of the case against them or their interests; giving them a right to be heard; not having a personal interest in the outcome; and acting only on the basis of logically probative evidence.

Public health or safety	<p>Includes the health or safety of persons:</p> <ul style="list-style-type: none"> <li>a. under lawful care or control; or</li> <li>b. using community facilities or services provided by the public or private sector; or</li> <li>c. in employment workplaces.</li> <li>d. For example – a patient under the care or control of a doctor, nurse or other health professional at a public health facility.</li> </ul> <p>For example - a patient under the care or control of a doctor, nurse or other health professional at a public health facility.</p>
Public interest	Considerations affecting the good order and functioning of the community and government affairs.
Public Interest Disclosure	An appropriate disclosure of public interest information (such as a report of corrupt conduct, reprisal, maladministration that affects a person’s interests in a substantial and specific way, substantial misuse of public resources, substantial and specific: danger to public health and safety the environment) made to a proper authority.
Public service officer	An employee, member of officer of an agency or entity.
Substantial and specific	<p>Substantial - means ‘of a significant or considerable degree (or great)’. It must be more than trivial or minimal and have some weight or importance (e.g. conduct that is moderately or somewhat serious).</p> <p>Specific - means ‘precise or particular’. This refers to conduct or detriment that is able to be identified or particularised as opposed to broad or general concerns or criticisms.</p>